IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.797 OF 2005

Shri Rajendra Babanrao Mandavgane — Appellant
vs.
Mrs.Jayshree w/o.Vinod Nagpure — Respondent

Mr.Navnath Tambade for Mr.S.M.Dambre for the appellant.

CORAM : B.H. MARLAPALLE,J.

DATED : 6th September 2005

P.C.

Heard the learned counsel for the appellant-original defendant in S.C.Suit no.1017/2002. The said Suit was filed for declaration that the plaintiff was entitled for half share in the partnership business carried in the name and style of M/s..Sairam Trading Company, shop no.1, Navyug Chawl, Opp. Sona Hospital, Ghatkopar(West). Notice of Motion No.908/2002 was taken out in the said Suit and on 5.9.2002, ad-interim injunction order was passed in the said notice of motion. The appellant filed his reply to the notice of motion on 3.7.2003. However, on or about 20.4.2005 the appellant himself took out a fresh notice of motion and prayed for setting aside the exparte order dated 5.4.2005. This notice of motion has been rejected by the impugned order on the ground that it was not maintainable.

2. The trial Court noted that the ad-interim exparte order was passed under Order 39 Rules 1 and 2 and it could not be called as a decree so as to entertain an application under Order 9 Rule 13 of CPC. The exparte order passed was appelable, if it was not vacated. The view taken by the trial Court cannot be termed as illegal or perverse and, therefore, this appeal must fail.

3. The appeal is dismissed in limine.

4. Civil Application does not survive.

(B.H. MARLAPALLE,J.)